



**WISCONSIN SUPREME COURT
THURSDAY, OCTOBER 28, 2004
10:45 a.m.**

01-0724/01-1031/01-2486 Patricia Wischer, et al. v. Mitsubishi Heavy Industries America, Inc., et al.

This is a review of a split decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which reversed an award given by a Milwaukee County jury in a case where Judge Dominic S. Amato presided.

In this case, the Supreme Court will decide whether a \$94 million award of punitive damages (that is, damages that are meant to punish a wrongdoer) was unconstitutionally excessive. The Court also will determine if the law requires a plaintiff who is seeking to recover punitive damages to prove that the defendant intended to cause the injury.

Here is the background: this case is actually three cases that have been consolidated. This is the so-called Big Blue case, involving the July 14, 1999 collapse of a 45-storey crane during the construction of Milwaukee's Miller Park Stadium. The crane, dubbed Big Blue, was to lift a large piece of the retractable roof into place so that workers could bolt it down. Tragically, the crane broke and its boom struck another crane holding three ironworkers, all of whom were thrown to the ground and killed instantly.

The parties have disagreed about the cause of the collapse. The plaintiffs, who are the wives of the men who were killed – Patricia Wischer, Marjorie De Grave, and Ramona Dulde-Starr – maintain that Mitsubishi Heavy Industries America Inc., a contractor hired to build the stadium roof, ordered the lift in spite of winds that were too strong. Mitsubishi argues that the winds were within the posted Big Blue limit.

A month after the accident, the three spouses filed suit in Milwaukee County Circuit Court. The jury ultimately awarded \$5.25 million in compensatory damages and \$94 million in punitive damages.

Wisconsin law requires a plaintiff to demonstrate that a defendant acted maliciously or with intentional disregard for the plaintiff's rights in order to collect punitive damages.¹ Arguing that the plaintiffs did not demonstrate this, Mitsubishi appealed the punitive damage award as excessive and not warranted under the law. The company noted that there was no showing that it had maliciously intended to harm the men.

A divided Court of Appeals agreed, reversing the jury's punitive damage award. The Court of Appeals, however, did not address the issue of whether the award was excessive; it resolved the case solely on the basis of interpretation of the statute.

In the Supreme Court, the spouses argue that punitive damages are appropriate because their husbands' rights to a safe workplace were intentionally disregarded in order to meet a construction deadline. Mitsubishi, on the other hand, maintains that the plaintiffs are developing creative arguments to avoid what Mitsubishi sees as the statute's clear requirement that the plaintiffs must prove that the company intended to injure their husbands.

One factor the Court also will analyze is the proportion of punitive damages to compensatory damages. In this case, the plaintiffs received about \$18 million in punitive damages for every \$1 million in compensatory damages.

¹ Wis. Stats. § 893.85(3)

The Supreme Court will issue its opinion in this case by June 30, 2005. Find the opinion on the Web at www.wicourts.gov.